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Understanding the Power of Grandfathering

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The ambitious remapping project undertaken by the NFIP has increased the necessity for administrators, insurance agents, and service providers alike to understand the concept of “grandfathering.” Why is it so important to understand flood map grandfathering? Because, as a result of map revisions, many property owners are now required to purchase flood insurance. Often NFIP grandfathering rules have not been applied when rating these policies, resulting in higher premiums than necessary.

An issue which regularly causes confusion is that the term “grandfathering” is used by the NFIP to mean several different things such as rate grandfathering, grandfathered properties, or map grandfathering provisions. It is this third concept that we will explore here.

First, though, let’s briefly contrast the various uses of the word “grandfathering.” Legislators and administrators often refer to “grandfathered” rates when discussing subsidized rates applicable to properties constructed long before the NFIP was implemented in 1968. There is certainly a lot of discussion about eliminating the subsidy for these properties and requiring rates that are commensurate with the risk of loss. The properties themselves are considered “grandfathered” because they were constructed before the flood program or, more accurately, before the publication of a community’s first Flood Insurance Rate Map (FIRM.) Designated as Pre-FIRM properties, these buildings are exempt from compliance with NFIP floodplain management regulations, at least until the property owner undertakes a major renovation or repair (known as substantial improvement or substantial damage.) Applicable flood insurance rates and designation as Pre-FIRM or Post-FIRM construction are virtually independent of the map grandfathering rules.

What Agents Must Know About Map Grandfathering

Map grandfathering provisions address two pivotal issues affecting the rating of a flood policy: what is the applicable flood zone, and what is the required Base Flood Elevation (BFE)? NFIP rating rules allow a flood policy to be rated based on the current map or a prior map, depending on which produces a more favorable premium for the property owner. This statement may be a little too simplified, so let’s break it down in detail.

Existing Business—Renewal Policies

One set of grandfathering rules applies to flood policies that are already in existence and are being renewed. Renewal policies may continue to be rated using the FIRM zone and the BFE designated by the map in effect when the policy was originally written. Two conditions apply: the NFIP coverage on the building must have been continuous, and the building must not have been altered in a way that would make the lowest floor for rating lower than the BFE on the original FIRM. If the original map designated the location of the building to be in a low- or moderate-risk flood zone (Zone B, C, X, or D), then the zone is also grandfathered and there is no BFE requirement.

For example, let's say that at the time a home was built in 1989, it was located in a Zone A-11 on the FIRM in effect at the time. The BFE at the location of this building was 16 feet Mean Sea Level (MSL), and the elevation certificate showed the lowest floor of the building to be 20 feet MSL. The homeowner bought a flood policy in 1989 based on this data and has maintained continuous coverage since. Now, fast forward to 2007 and the revision of the flood map for the community in which the building is located. The new map designates the homeowner's property to be in a Zone VE, with a BFE of 20 feet MSL. As long as his property has not been significantly altered, this homeowner's NFIP policy can continue to be rated in the original Zone A-11, with the original BFE of 16 feet MSL. The revised map would not affect this homeowner unless his building was substantially improved or was declared substantially damaged and repaired.

New Business—Applications for Coverage

That was the easy example. However, not every property owner buys a flood policy and keeps it continuous. In fact, some properties may never have been covered by a flood policy; another set of grandfathering rules applies to policies of this kind. Perhaps the property was originally designated as located in a flood Zone B, which is not subject to the mandatory purchase of flood insurance. Now, fast forward again to a 2007 map revision.

The property owner receives a letter from his lender advising him that his mortgaged property is now located in a flood Zone AE, designated as high hazard and subject to the mandatory purchase requirement. Map grandfathering rules can even help this property owner keep his premium affordable. When he applies for his new policy, the homeowner's flood insurance policy rates can be based on the FIRM zone and the BFE (if applicable) on the map in effect on the date the building was originally constructed as long as, once again, it was built in compliance with the floodplain ordinances in effect at that time and has not been significantly altered since.

Our property owner will now need to purchase flood insurance, but the rating of that policy can be based on the old map, thereby allowing him the benefit of Zone B rates, if they will produce a lower premium for his coverage. One big warning, however. Documentation for FEMA must be provided to locate his

property on the old map. Another little footnote: this property can qualify as a Zone B rated property, but it cannot qualify for the Preferred Risk Policy (PRP). The property must be located in a Zone B, C, or X according to the flood map current as of the inception date of each year's policy if it is to qualify for the PRP.

Making Sense of It All

Does all of this really make sense? It does if you look at it this way: the original property owner built the structure according to all of the land use rules and requirements in force at the time of construction. Now, remapping comes along and changes the rules! Without the benefit of grandfathering, the property owner suffers from a rule change applied after the fact, when he can do nothing about it. You don't usually change the rules of the game after it has begun. Map grandfathering is, ultimately, a fair way to play.

For more information and complete NFIP rating rules, refer to the Rating Section of the NFIP ***Flood Insurance Manual***, available on the FEMA website. The information about "Map 'Grandfathering' Rules" is listed on pages RATE 21-23.

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